

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANDRE LEROY GARRETT, ID # 829874,)	
Petitioner,)	
vs.)	No. 3:08-CV-0129-L
)	ECF
NATHANIEL QUARTERMAN, Director,)	
Texas Department of Criminal)	
Justice, Correctional Institutions Division,)	
Respondent.)	

**ORDER OF THE COURT ON RECOMMENDATION
REGARDING CERTIFICATE OF APPEALABILITY**

Considering the record in this case and the recommendation of the Magistrate Judge, and pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253 (c), the Court hereby finds and orders:

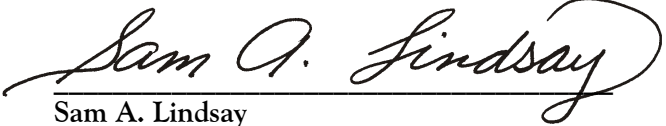
IFP STATUS:

- (X) the party appealing is GRANTED *in forma pauperis* status on appeal.
- () the party appealing is DENIED *in forma pauperis* status on appeal for the following reasons:
- () the Court certifies, pursuant to Fed. R. App. P. 24(a) and 28 U.S.C. § 1915 (a)(3), that the appeal is not taken in good faith. In support of this finding, the Court adopts and incorporates by reference the Magistrate Judge's Findings and Recommendation entered in this case on _____. Based upon the Magistrate Judge's findings, this Court finds that the appeal presents no legal points of arguable merit and is therefore frivolous. See *Harkins v. Roberts*, 935 F. Supp. 871, 873 (S.D. Miss. 1996) (citing *Howard v. King*, 707 F. 2d 215, 219-20 (5th Cir. 1983)).
- () the person appealing has not complied with the requirements of Rule 24 of the Federal Rules of Appellate Procedure and /or 28 U.S.C. § 1915(a)(1) as ordered by the Court.

COA:

- () a Certificate of Appealability is GRANTED on the following issues: _____
- (X) a Certificate of Appealability is DENIED. The Court hereby adopts and incorporates by reference the Magistrate Judge's Findings and Recommendation entered in this case on **March 5, 2008**, in support of its finding that the habeas corpus petition is a successive petition. See 28 U.S.C. § 2244(b); *Crone v. Cockrell*, 324 F.3d 833, 836-37 (5th Cir. 2003). Petitioner has failed to show that reasonable jurists would find it debatable whether the Court was correct in dismissing his successive petition pending review by a three-judge panel of the Fifth Circuit Court of Appeals. See *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); 28 U.S.C. § 2253(c)(2).

DATE: July 29, 2008


Sam A. Lindsay
United States District Judge